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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,984	09/27/2005	Fuquan Zeng	10076-N2459-APP	9239
23456 7590 08/26/2009 WADDEY & PATTERSON, P.C. 1600 DIVISION STREET, SUITE 500 NASHVILLE, TN 37203				
EXAMINER				
YAGER, JAMES C				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
08/26/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/530,984

Applicant(s)

ZENG, FUQUAN

Examiner

JAMES YAGER

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-20 and 57-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-20 and 57-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 July 2009 has been entered.

Response to Amendment

2. The amendment filed 24 July 2009 has been entered. Claims 18-20 and 57-59 are pending in the application. The rejections of record from the office action 26 January 2009 not repeated herein have been withdrawn.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 18, 57 and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhao et al. (US 6,423,764).

Regarding claims 18, 57 and 59, Zhao discloses a bottle made of polyethylene terephthalate (C1/L30-35, C7/L25-30) comprising a poly(oxyalkene) polymeric colorant comprising anthraquinone (C5/L30-35) (i.e. a disperse dye having a chemical affinity for polyethylene terephthalate; anthraquinone; a colored article comprising an additive having a chemical affinity for the article bound to at least the surface of the article). Given that Zhao discloses colorant that is anthraquinone as presently claimed, it is clear that the anthraquinone will inherently have chemical affinity for polyethylene terephthalate as presently claimed.

Although Zhao does not disclose an article produced by the process as claimed, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

Therefore, absent evidence of criticality regarding the presently claimed process and given that Zhao meets the requirements of the claimed product, Zhao clearly meet the requirements of present claim 18.

5. Claim 59 is rejected under 35 U.S.C. 102(b) as being anticipated by De Caluwe et al. (US 5,524,778).

Regarding claim 59, De Caluwe discloses a container made from recycled plastics comprising pigments (i.e. a colored article) (C2/L10-26) which is blow molded (i.e. moulded) (C2/L50-55) and comprising a label attached to the container with adhesive (contacted with additive having chemical affinity for the moulded article to bind the additive to at least the surface of the moulded article) (C3/L34-37).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claims 18-20 and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luka et al. (6,393,803) in view of Zhao et al. (US 6,423,764).

Regarding claims 18-20 and 57-59, Luka discloses coating a container made of polyethylene terephthalate (C4/L6-7) on the exterior surface with a colorant (C3/L65-67). Luka does not specifically disclose that the colorant has a chemical affinity for polyethylene terephthalate.

Zhao discloses a bottle made of polyethylene terephthalate (C1/L30-35, C7/L25-30) comprising a poly(oxyalkene) polymeric colorant comprising anthraquinone (C5/L30-35) (i.e. a disperse dye having a chemical affinity for polyethylene terephthalate; anthraquinone). Zhao further discloses that the poly(oxyalkene) polymeric colorant comprising anthraquinone provides effective and stable colorations to thermoplastic resins, are easily handled and exhibit desirable migration properties (C4/66-C5/L2). Given that Zhao discloses colorant that is anthraquinone as presently claimed, it is clear that the anthraquinone will intrinsically have chemical affinity for polyethylene terephthalate as presently claimed.

Luka and Zhao are analogous are because both teach about polyethylene terephthalate containers comprising a colorant. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the poly(oxyalkene) polymeric colorant comprising anthraquinone of Zhao as the colorant for coating the bottle of Luka to provide a bottle with a colorant that provides effective and stable coloration, is easily handled and exhibits desirable migration properties.

Examiner notes that since Luka in combination with Zhao discloses a molded polyethylene terephthalate container as presently claimed and further given that Zhao discloses that anthraquinone has migration properties, it is clear that the anthraquinone would intrinsically be bound below the surface of the container as the result of migration as presently claimed.

Regarding claim 18, although modified Luka does not disclose an article produced by the process as claimed, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

Therefore, absent evidence of criticality regarding the presently claimed process and given that modified Luka meets the requirements of the claimed product, modified Luka clearly meet the requirements of present claim 18.

Response to Arguments

9. Applicant's arguments filed 24 July 2009 have been fully considered but they are not persuasive.

Applicant argues that the article produced by the invention is not the same as or obvious from Zhao because Zhao colors the bulk material in a homogeneous manner and subsequently molds the product and the article of the instant invention is colored after being formed and thus produces the advantage of being able to color some but not all of the preforms manufactured.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the article is not colored in a homogeneous manner) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

While applicant argues that the instantly claimed article is different than the article of Zhao, applicant has provided no evidence to support this position.

It is agreed that the process of making the article of Zhao is different from the process of making the instantly claimed article.

However, although Zhao does not disclose an article produced by the process as claimed, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The

patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

Therefore, absent evidence of criticality regarding the presently claimed process and given that Zhao meets the requirements of the claimed product, Zhao clearly meet the requirements of present claim 18.

It is noted that applicant does not argue the combination of Luka and Zhao. Therefore, the rejections of the claims using Luka in view of Zhao are maintained.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES YAGER whose telephone number is (571)270-3880. The examiner can normally be reached on Mon - Fri, 7:30am-5pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JY 8/19/09

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794